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Morgan Stanley & Co. Incorporated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Lehman Brothers Inc., Merrill Lynch, Pierce,
Fenner & Smith Incorporated, and
Morgan Stanley & Co. Incorporated,

Plaintiffs,

v.

Theflyonthewall.com, Inc.,

Defendant.
-----X

06 Civ.

4908
COMPLAINT

Judge Daniels.

Plaintiffs Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley & Co. Incorporated (collectively, the "Firms"), by and through their attorneys, Weil, Gotshal & Manges LLP, for their complaint against Theflyonthewall.com, Inc. ("Fly") allege, upon knowledge as to themselves and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This lawsuit, brought by a group of leading securities firms, arises out of the systematic misappropriation and blatant copyright infringement of their proprietary, analytical equity research reports by defendant's online service, theflyonthewall.com. On its website, Fly promises subscribers – without exaggeration – that they will “receive breaking analyst comments as they are being disseminated by Wall Street trading desks.” <http://www.theflyonthewall.com/splashpage.php?action=aboutus> (accessed June 21, 2006). Without the slightest pretext of generating original equity research on its own, Fly systematically and impermissibly accesses the Firms' proprietary equity research and – free riding on these significant research efforts – rushes to market with the intent and effect of undermining the Firms' enormous investments in providing clients and other authorized recipients with exclusive and time-sensitive financial market analysis. For a time, Fly reproduced these reports verbatim. These blatant acts of misappropriation and copyright infringement warrant both injunctive relief and damages.

2. The Firms' research reports so pirated by Fly constitute a fundamental, and competitively significant, component of the Firms' businesses. The Firms' equity research is provided only to their respective clients and to other authorized recipients. The fruits of this research inform clients as to whether and how to utilize the Firms' services: the more cogent and timely the research, the greater its value to the Firms' clients and the greater the potential for revenues to the Firms from client transactions. Moreover, the value of the research to the Firms' clients is greatly enhanced by its limited dissemination, i.e., its exclusivity.

3. By reaping where it has not sown and breaking the critical link between the Firms' limited dissemination of their proprietary and time-sensitive equity research and their performance of services for their clients, Fly has caused injury to the Firms. If not permanently enjoined, Fly will continue to inflict this injury. On the other hand, if enjoined, Fly stands only to lose the illegitimate gains from its free riding on the Firms' investment, labor, and expertise. Fly would remain free to prepare and disseminate its own equity research and any proprietary third-party research it has been authorized to distribute. Moreover, since the equity research still will be available from the Firms and from other authorized distributors, an injunction will not result in any harm to the Firms' clients and other authorized recipients – the only intended beneficiaries of this research.

THE PARTIES

4. Plaintiff Lehman Brothers Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 745 Seventh Avenue, New York, New York 10019. Lehman Brothers is an investment banking and financial services firm that serves both institutional clients and high-net-worth individuals. Through its restricted website LehmanLive.com, the firm offers clients global equity and fixed income research along with other branded research products. In addition, each morning Lehman publishes "Before the Bell," which contains equity research, as well as its Morning Meeting Flash Summary.

5. Plaintiff Merrill Lynch, Pierce, Fenner & Smith Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 4 World Financial Center, 250 Vesey Street, New

York, New York 10080. Merrill Lynch is a management, capital markets, and advisory company. As an investment bank, it is a global trader and underwriter of securities and derivatives across a broad range of asset classes and serves as a strategic advisor to corporations, governments, institutions, and individuals worldwide. The company is also a manager of financial assets. The firm's research lies at the core of the value proposition offered to clients and is an integral component of the product offerings in the Global Markets and Investment Banking Group and Global Private Client areas of its business. Through its restricted-access websites, the firm offers global equity strategy and economic, global fixed-income & equity-linked, and global wealth-management strategy research to its clients.

6. Plaintiff Morgan Stanley & Co. Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1585 Broadway, New York, New York 10036. Morgan Stanley is a global, diversified financial services company, with franchises in securities (where Morgan Stanley serves individual and institutional investors and investment banking clients), asset management, and credit card services. Morgan Stanley offers institutional and individual clients exclusive access to its equity research through investment professionals and through its proprietary websites, permissioned on a client-by-client basis.

7. Defendant Theflyonthewall.com, Inc. is a for-profit company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 28 Springfield Avenue, Unit F, Summit, New Jersey 07901.

Defendant is qualified to do business in the State of New York and regularly transacts business in the State of New York, including in this judicial district.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a) and (b) and 1367.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), in that a substantial part of the events giving rise to the claims occurred in this district, and defendant is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

The Plaintiffs and Their Market Analysis

10. Plaintiffs are leading sources of incisive and timely equity analysis for individual and institutional clients. Each of the plaintiffs invests substantial financial and human resources in generating original equity research reports on public companies in various sectors of the economy. The value of these reports to the Firms' clients lies in the high quality of the analysis; the timeliness with which that analysis reaches potential investors; and the limited dissemination of that analysis.

11. The Firms' equity research is the product of the full-time efforts, skill, and judgment of, among others, analysts assigned to follow particular industries and, in some cases, particular companies. A typical report may include, inter alia, detailed analysis of: the company's recent performance; economic and political events that bear upon the company's prospects; factors for investors to watch; and short- and longer-term estimates of the value of the company's equity.

12. The reports constitute proprietary and economically valuable analysis presented in a manner that is intended to inform clients' investment decisions. The Firms provide valuable equity analysis to existing clients, who may use the reports to assist them in making investment decisions and often engage the Firms to execute trades, on which the Firms may receive commissions or mark-ups. The high quality and limited dissemination of the Firms' equity research also is a means of attracting new clients, and it contributes to the Firms' overall standing and reputation.

13. The Firms bear the substantial cost of creating the reports because they are a valuable resource for investing clients and therefore help to cultivate client relationships and to generate revenue from client transactions.

14. In addition to the restricted modes of distribution described in paragraphs 4-6 above, the Firms also distribute their equity research to permissioned customers on a limited basis through authorized distributors such as Reuters and Bloomberg.

15. The equity research reports intended for clients of the Firms contain copyright notices and state that they may not be copied, sold, or redistributed without consent of the generating firm. They are distributed by the Firms only to clients or, as noted, to authorized distributors, which agree to treat the Firms' equity research as proprietary and to distribute it only to subscribers authorized by the Firms. These distributors further agree to use reasonable efforts to prevent disclosure of the research to persons other than authorized clients or employees/agents of the distributor and to prevent use of the research by their employees for trading or other purposes.

16. Each Firm has demonstrated a commitment to remaining an industry-leading source of equity analysis required by investors in fast-paced and increasingly global markets. In order to fulfill this commitment, the Firms often begin to release equity research to their clients and licensed vendors several hours before the U.S. stock exchanges open each day. This is done both to get meaningful, updated investment views directly to clients on a timely basis and to provide the Firms' sales forces the opportunity to market those views to clients in order to capture commissions. Moreover, research is issued on an ongoing basis throughout the day, and much of that research has market impact. It is important to the Firms that the distribution of their research products be limited to their authorized recipients, as broader distribution would reduce the value of the information to their clients. Fly's conduct, described below, causes just such a reduction in value.

Defendant's Commercial Exploitation of the Firms' Market Research

17. Fly operates a commercial website, theflyonthewall.com, that offers subscribers access, for a monthly or annual fee, to valuable market information that, as its name suggests, Fly obtains without authorization from other sources.

18. Fly touts itself as a "single source provider of relevant, market-moving Financial News, Syndicate, and Event information to equity professionals." <http://www.theflyonthewall.com/splashpage.php?action=aboutus> (accessed June 21, 2006). Admittedly designed to "bridge the gap between Wall Street's big players 'in the know' and those who want into their club," Fly describes a subscription to its service as comparable to "having a seat at Wall Street's best houses and learning what they know when they know it." *Id.* Fly promises that subscribers will receive "breaking analyst

comments as they are being disseminated by Wall Street trading desks” and a valuable package of “relevant, actionable, equity news in a concise and timely manner.” Id.

19. With respect to its “News” service, Fly’s website states:

We start early in the morning as analyst calls are being disseminated in order to bring you the most comprehensive list of analyst recommendations, rumors, events including conference calls and scheduling, complete syndicate information, plus the latest spot secondary pricings.

- Speaking to trading desks, money managers and brokers, theflyonthewall.com has become the source of **money-making ideas** for thousands of buy and sell side **professionals**.
- **Analyst recommendations, midday break-ins**, and sell side **trading calls as they are being made** to the buy side, NOT after they appear on the other news services.
- Schedules of important events and presentations made by companies and analyst **events that can create trading opportunities**.
- Hot Stocks, Economic data, Stock Splits, quiet period end dates and more.

Theflyonthewall.com is continually monitoring and analyzing information flow from Wall Street so you can provide the appropriate information to your clients or enable you to make faster trading decisions.

See http://www.theflyonthewall.com/splashPage.php?action=news_feed

(accessed June 21, 2006) (emphasis in original).

20. Fly also has offered its subscribers access to the Firms’ equity research in audio form. Fly has touted “Fly Radio 1.0” as offering subscribers “the same high quality Wall Street sources . . . but in a faster format with more extensive coverage.”

See www.theflyonthewall.com (accessed May 3, 2006).

21. In short, Fly promotes itself as a substitute for the Firms as a source of information and analysis. Its means of accomplishing this aim is to free ride on the Firms' proprietary equity research.

Copyright Infringement

22. Fly built its business on routinely copying verbatim the core analysis from the Firms' equity research reports and posting it, often within minutes, on its website for the benefit of its paying subscribers. On April 13, 2005, several firms, in a demand letter that advised Fly that it was misappropriating their proprietary research as well as infringing their copyrights, provided Fly with illustrative examples of its infringement of their copyrighted research reports, including:

Firms' Research Reports	Theflyonthewall.com
<p>Lehman Brothers, Mar. 1, 2005:</p> <p>We believe the company's guidance of \$0.95-\$1.00 is still fully achievable even if fuel costs stay elevated. Moreover, sales growth came in above our expectations as the company continues to be taking market share in the industry. Summary: We are maintaining our price target of \$34.00.</p>	<p>Theflyonthewall.com, Mar. 1, 2005:</p> <p>We believe the company's guidance of \$0.95-\$1.00 is still fully achievable even if fuel costs stay elevated. Moreover, sales growth came in above our expectations as the company continues to be taking market share in the industry. We are maintaining our price target of \$34.00.</p>
<p>Morgan Stanley, Feb. 16, 2005:</p> <p>We are downgrading GMR from Overweight-V to Equal-weight. Current valuation represents 142% of NAV, a 22% premium to TK, which suggests a re-rating of the shares to reflect the new dividend policy with a risk/reward profile largely in line with its peer group.</p> <p>...</p> <p>Key inflection points to watch include the OPEC oil price basket ahead of the March 16 meeting, Atlantic Basin inventories, March 11, IEA report, China demand and early signs of a seasonal slowdown in tanker rates such as refining margins.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>We are downgrading shares as current valuation represents 142% of NAV, 22% premium of TK, which suggests re-rating of shares to reflect new dividend policy with a risk/reward profile largely in line with its peer group.</p> <p>...</p> <p>Key inflection points to watch include OPEC oil price basket ahead of March 16 meeting and early signs of seasonal slowdown in tanker rates such as refining margins.</p>

23. Fly also has copied verbatim equity research of plaintiff Merrill Lynch, as the following example illustrates:

Merrill Lynch Research Report	Theflyonthewall.com
<p>Merrill Lynch, <i>Avaya Inc. Equity Research Report</i>, Feb. 24, 2005:</p> <p>We are upgrading Avaya from Neutral to Buy. . . We believe that the Dec quarter disappointment was largely attributable to mgmt's focus on closing Tenovis a quarter early. We believe its fundamental VoIP business is intact, and the 4% sequential top-line decline (ex-acq) is mostly related to normal seasonality in Avaya's F1Q.</p>	<p>Theflyonthewall.com, Feb. 24, 2005:</p> <p>Avaya Inc-AV raised to Buy from Neutral on recent sell-off@MLCO We believe that the Dec quarter disappointment was largely attributable to mgmt's focus on closing Tenovis a quarter early. We believe its fundamental VoIP business is intact, and the 4% sequential top-line decline (ex-acq) is mostly related to normal seasonality in Avaya's F1Q.</p>

24. Plaintiffs Lehman Brothers and Morgan Stanley seek to recover for willful copyright infringement of the following reports for which the United States Copyright Office has issued certificates of registration (copies of which are attached as Exhibit A hereto):

Lehman Brothers

- (i) "*Before the Bell*" *Lehman Brothers Equity Research* – published Mar. 2, 2005; registration certificate issued Apr. 8, 2005.
- (ii) "*Kulicke & Soffa*" *Lehman Brothers Equity Research* – published Mar. 2, 2005; registration certificate issued Apr. 8, 2005.
- (iii) "*Genentech Inc.*" *Lehman Brothers Equity Research* – published Mar. 2, 2005; registration certificate issued Apr. 8, 2005.
- (iv) "*Lear Corp.*" *Lehman Brothers Equity Research* – published Mar. 2, 2005; registration certificate issued Apr. 8, 2005.
- (v) "*Boeing Co.*" *Lehman Brothers Equity Research* – published Mar. 2, 2005; registration certificate issued Apr. 8, 2005.
- (vi) "*RH Donnelley*" *Lehman Brothers Equity Research* – published Feb. 28, 2005; registration certificate issued Apr. 8, 2005.
- (vii) "*Symbol Technologies*" *Lehman Brothers Equity Research* – published Mar. 1, 2005; registration certificate issued Apr. 8, 2005.
- (viii) "*United Natural Foods*" *Lehman Brothers Equity Research* – published Mar. 1, 2005; registration certificate issued Apr. 8, 2005.

(ix) "*Machinery*" *Lehman Brothers Equity Research* – published Mar. 1, 2005; registration certificate issued Apr. 8, 2005.

Morgan Stanley

(i) *Phelps Dodge Report* – published Feb. 16, 2005; registration certificate issued Mar. 18, 2005.

(ii) *Nextel Communications Report* – published Feb. 14, 2005; registration certificate issued Mar. 18, 2005.

(iii) *New York Times Report* – published Feb. 16, 2005; registration certificate issue Mar. 18, 2005.

(iv) *General Maritime Report* – published Feb. 16, 2005; registration certificate issue Mar. 18, 2005.

(v) *Deere Report* – published Feb. 15, 2005; registration certificate issue Mar. 18, 2005.

(vi) *Cooper Tire & Rubber Report* – published Feb. 15, 2005; registration certificate issue Mar. 18, 2005.

(vii) *Commonwealth Telephone Report* – published Feb. 16, 2005; registration certificate issue Mar. 18, 2005.

(viii) *Assurant, Inc. Report* – published Feb. 16, 2005; registration certificate issue Mar. 18, 2005.

The following chart illustrates Fly's infringement of each of the listed reports.

Firms' Research Reports	Theflyonthewall.com
<p>Lehman Brothers, "Before the Bell" <i>Lehman Brothers Equity Research</i>, Mar. 2, 2005:</p> <p><u>GM</u> . . . reducing EPS for 1Q05 from \$0.25 to \$(0.18) and FY05 from \$2.75 to \$2.25.</p> <p><u>F</u> . . . trimmed EPS for 1Q05 . . . unch at \$1.65.</p> <p><u>LEA</u> . . . Downgrading from 1-OW to 2-EW . . .</p> <p><u>AXL</u> (\$26.83, 2-EW) lowering P/T from \$26 to \$25 . . .</p> <p><u>ARM</u> . . . lowering ests for FY05 from \$8.8B/\$1.75 to \$8.6B/\$1.60 vs. \$1.70 cons & FY06 from \$8.9B/\$2.25 to \$8.7B/\$2.10 vs. \$2.08 cons.</p>	<p>Theflyonthewall.com, Mar. 2, 2005:</p> <p>Reducing GM EPS for 1Q05 from \$0.25 to \$(0.18) and FY05 from \$2.75 to \$2.25. Trimmed Ford EPS for 1Q05 unch at \$1.65. Downgrading LEA to Eq Weight from Overweight.</p> <p>AXL (EW) lowering P/T from \$26 to \$25; ARM [] lowering ests for FY05 from \$8.8B/\$1.75 to \$8.6B/\$1.60 vs. \$1.70 cons & FY06 from \$8.9B/\$2.25 to \$8.7B/\$2.10 vs. \$2.08 cons.</p> <p>DPH(UW) lowering P/T from \$6 to \$5 (6.2x normalized FCF of \$0.90 per share); lowering ests for FY05 from \$28.5/(\$0.65)</p>

<p>DPH (\$6.89, 3-UW) . . . lowering P/T from \$6 to \$5 (6.2x normalized FCF of \$0.90 per share); lowering ests for FY05 from \$28.5/(\$0.65) to \$27.9B/(\$0.75) vs. (\$0.59) cons; unchanged estimates for FY06 \$28B/(\$0.15) vs. \$0.00 cons.</p>	<p>to \$27.9B/(\$0.75) vs. (\$0.59) cons; unchanged estimates for FY06 \$28B/(\$0.15) vs. \$0.00 cons.</p>
<p>Lehman Brothers, "Kulicke & Soffa" Lehman Brothers Equity Research, Mar. 2, 2005:</p> <p>Kulicke & Soffa's business appears to be at a trough, and while there are no definitive signs of an upturn yet, we think a recovery may occur late this fiscal year, and in fiscal 2006. . . . We maintain our estimates of revenue of \$115 million (down 1% sequentially) versus the consensus of \$116.3 million, and EPS of (\$0.17) versus the consensus of (\$0.14).</p>	<p>Theflyonthewall.com, Mar. 2, 2005:</p> <p>We maintain our estimates of revenue of \$115m (down 1% sequentially) vs consensus of \$116.3m, and EPS of (\$0.17) vs consensus of (\$0.14). KLIC's business appears to be at a trough, and while there are no definitive signs of an upturn yet, we think a recovery may occur late this fiscal year, and in fiscal 2006.</p>
<p>Lehman Brothers, "Genentech Inc." Lehman Brothers Equity Research, Mar. 2, 2005:</p> <p>While there are multiple near term opportunities for revenue growth, they are focused on market expansion of current products. . . . [D]espite this overall strength, there is only one new molecule, Lucentis, in phase III trials . . .</p>	<p>Theflyonthewall.com, Mar. 2, 2005:</p> <p>While there are multiple n/term oppty's for rev growth, they are focused on mkt expansion of current products. Despite overall strength of pipeline, there is only one new molecule in phase III trials, Lucentis (AMD).</p>
<p>Lehman Brothers, "Lear Corp." Lehman Brothers Equity Research, Mar. 2, 2005:</p> <p>Downgrading from 1-OW to 2-EW and lowering P/T from \$56 to \$39...lowering ests for FY 05 from \$17.6B/\$5.00 to \$17.0B/\$3.50 vs. \$5.60 cons and FY06 from \$18.3B/\$5.85 to \$17.3B/\$4.35 vs. \$6.49 cons.</p>	<p>Theflyonthewall.com, Mar. 2, 2005:</p> <p>Lear-LEA cut to Eq Weight from Overweight, tgt to \$39 from \$56@LEHM Lowering ests for FY05 from \$17.6B/\$5.00 to \$17.0B/\$3.50 vs. \$5.60 cons and FY06 from \$18.3B/\$5.85 to \$17.3B/\$4.35 vs. \$6.49 cons.</p>
<p>Lehman Brothers, "Boeing Co." Lehman Brothers Equity Research, Mar. 2, 2005:</p> <p>Raising our already bullish FY06 delivery forecast to 370-385 in-line with management's recent above the Street 375-385 guidance which surprised investors and will likely prove conservative. Positive laterals for EADS, GR, COL.</p>	<p>Theflyonthewall.com, Mar. 2, 2005:</p> <p>Raising our already bullish FY06 delivery forecast to 370-385 in-line with management's recent above the Street 375-385 guidance which surprised investors and will likely prove conservative. Positive laterals for EADS, GR, COL.</p>
<p>Lehman Brothers, "RH Donnelley" Lehman Brothers Equity Research, Feb. 28, 2005:</p> <p>We are raising . . . price target to \$62 (from \$61) . . . lower-than-anticipated debt at year-end 2004.</p>	<p>Theflyonthewall.com, Feb. 28, 2005:</p> <p>Raising target to \$62 from \$61 . . . lower than expected debt at the end of 2004.</p>
<p>Lehman Brothers, "Symbol Technologies" Lehman Brothers Equity Research, Mar. 1, 2005:</p> <p>We anticipate 4Q04 EPS will exceed our \$0.09 estimate & meet or exceed consensus of \$0.10. We anticipate 2005 EPS guidance in the range of our \$0.61 estimate & consensus of \$0.58. Investors are beginning to look ahead to 2006. . . . We believe SBL will have little trouble exceeding our 4Q04 revenue estimate of \$449m & our operating income estimate of \$41.5m.</p>	<p>Theflyonthewall.com, Mar. 1, 2005:</p> <p>We anticipate 4Q04 EPS will exceed our \$0.09 estimate & meet or exceed consensus of \$0.10. We believe SBL will have little trouble exceeding our 4Q04 revenue estimate of \$449m & our operating income estimate of \$41.5m. We anticipate 2005 EPS guidance in the range of our \$0.61 estimate & consensus of \$0.58. Investors are beginning to look ahead to 2006.</p>

<p>Lehman Brothers, "United Natural Foods" Lehman Brothers Equity Research, Mar. 1, 2005:</p> <p>We believe the company's guidance of \$0.95-\$1.00 is still fully achievable even if fuel costs stay elevated. Moreover, sales growth came in above our expectations as the company continues to be taking market share in the industry.</p> <p style="text-align: center;">* * *</p> <p>We are maintaining our price target of \$34.00.</p>	<p>Theflyonthewall.com, Mar. 1, 2005:</p> <p>We believe the company's guidance of \$0.95-\$1.00 is still fully achievable even if fuel costs stay elevated. Moreover, sales growth came in above our expectations as the company continues to be taking market share in the industry. We are maintaining our price target of \$34.00.</p>
<p>Lehman Brothers, "Machinery" Lehman Brothers Equity Research, Mar. 1, 2005:</p> <p>March Filled with Potential Catalysts ...[P]otential positive events... moving forward on an agreement for a highway bill (expected to be approved by May '05) which could come in near \$284 billion (up from \$218 on last bill) and possibly move to president ahead of schedule. Additionally ConExpo (construction industry conference) will take place from March 15th to the 19th and should provide a lot of comfort that commercial construction spending is poised to recover over the next few quarters.</p> <p style="text-align: center;">* * *</p> <p>We continue to recommend purchase of IR, CAT, PH, ETN, ITW and JOYG.</p>	<p>Theflyonthewall.com, Mar. 1, 2005:</p> <p>Machinery: March filled with Potential Catalysts@LEHM Potential positive events moving forward on an agreement for a highway bill (expected to be approved by May '05) which could come in near \$284 billion (up from \$218 billion on last bill) and possibly move to the president ahead of schedule. Additionally, ConExpos (construction industry conference) will take place from March 15th to the 19th and should provide a lot of comfort that commercial construction spending is poised to recover over the next few quarters. We continue to recommend purchase of IR, CAT, PH, ETN, ITW and JOYG.</p>
<p>Morgan Stanley, Phelps Dodge Report, Feb. 16, 2005:</p> <p>Moly Under Pressure The price for ferromolybdenum has come under a lot of pressure in recent days and is testing \$30 per pound – the price peaked at \$40 per pound in January. Momentum has shifted as buyers have temporarily backed out of the market. The weakness started in Europe, and we understand consumers are not taking entire allocations. Moly oxide is also weak. The price for moly oxide has softened as well, but not to the extent of ferro moly as yet... Weakness in the moly oxide price will impact PD results. PD sells approximately 70% of its molybdenum at spot prices (1 month lagged), while the remaining 30% is sold under fixed price contracts. We estimate PD will produce 64 million pounds of moly from its own mines in 2005. We believe the moly price will move down \$10-\$15 per pound within the next 6-18 months.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>[F]erromolybdenum price under a lot of pressure in recent days@MSCO Ferromolybdenum is testing \$30 per pound; price peaked at \$40 per pound in January. Momentum has shifted as buyers have temporarily backed out of the market. Weakness started in Europe and we understand consumers are not taking entire allocations. Moly oxide also weak; price for moly oxide has softened as well, but not to the extent of ferro moly as yet. Weakness in moly oxide price will impact PD results. PD sells approx 70% of its molybdenum at spot prices (1 month lagged) while remaining 30% is sold under fixed price contracts. We est PD to produce 64M pounds of moly from its own mines in 05. Web (sic) believe moly price will move down \$10-15 per pound within next 6-18 months-Maintain Equal Weight.</p>
<p>Morgan Stanley, Nextel Communications Report, Feb. 14, 2005:</p> <p>Nextel is scheduled to report on Thursday the 17th Net subscriber additions were pre-released on January 11th, but we await other important metrics, financial results and 2005 guidance. Nextel Partners included ARPU and churn with its pre-release, while Nextel did not. We hope to receive expanded detail on Boost Mobile now that it accounts for nearly 40% of net adds.</p> <p style="text-align: center;">* * *</p> <p>We believe that the outcome of the pending Sprint Nextel merger is an important driver of the stock currently, in addition to the underlying fundamentals.</p>	<p>Theflyonthewall.com, Feb. 14, 2005:</p> <p>Nextel-NXTL scheduled to report results on Thursday, 2/17@MSCO Net subscriber additions pre-released on Jan 11th, with other important metrics, financial results and 2005 guidance to be released 2/17. NXTP included ARPU and churn with its pre-release, while NXTL did not. We hope to receive expanded detail on Boost Mobile now that it accounts for nearly 40% of net adds. We believe that outcome of pending Sprint Nextel merger is an important driver of stock currently, in addition to underlying fundamentals.</p>

<p>Morgan Stanley, New York Times Report, Feb. 16, 2005:</p> <p>Ad revenues for the flagship (WQXR-FM and WQEW-AM are now reported in the Times Media Group) were okay increasing 2.3% and not far off our 3.0% estimate for the entire first quarter. The Regionals remain robust or up 5.5% in January. Help wanted was a little disappointing increasing 8.5% versus a 16.2% gain in December. Most newspaper companies have reported accelerating help wanted gains in January. On the positive side, the critical real estate category was up 3.4% . . . Our rating is Overweight believing that secular growth in national print advertising and help wanted are particularly favorable for the Times.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>Ad revs for flagship (WXQR-FM and WQEW-AM are now reported in Times Media Group) were okay increasing 2.3% and not far off our 3.0% est for entire 1Q. The Regionals remain robust or up 5.5% in Jan. Help wanted was ittle (<u>sic</u>) disappointing increasing 8.5% vs 16.2% gain in Dec. Most newspaper companies report accelerating help wanted gains in Jan. On positive side, critical real estate category up 3.4%. We believe secular growth in national print advertising and help wanted particularly favorable for NYT.</p>
<p>Morgan Stanley, General Maritime Report, Feb. 16, 2005:</p> <p>General Maritime . . . rallied 37% off its early January lows on the initiation of a variable dividend policy which could return significant free cash flow to shareholders in a strong tanker rate environment.</p> <p style="text-align: center;">* * *</p> <p>We are downgrading. . . Current valuation represents 142% of NAV, a 22% premium to TK, which suggests a re-rating of the shares to reflect the new dividend policy with a risk/reward profile largely in line with its peer group.</p> <p style="text-align: center;">* * *</p> <p>Key inflection points to watch include the OPEC oil price basket ahead of the March 16 meeting . . . and early signs of a seasonal slowdown in tanker rates such as refining margins.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>We are downgrading shares as current valuation represents 142% of NAV, 22% premium to TK, which suggests re-rating of shares to reflect new dividend policy with a risk/reward profile largely in line with its peer group. GMR rallied 37% off its early Jan lows on initiation of variable dividend policy which could return significant free cash flow to shareholders in a strong tanker rate environment. Key inflection points to watch include OPEC oil price basket ahead of March 16 meeting and early signs of seasonal slowdown in tanker rates such as refining margins.</p>
<p>Morgan Stanley, Deere Report, Feb. 15, 2005:</p> <p>We are incrementally more positive on DE stock following the sell-off on what we view as an in-line quarter. DE raised its sales projections, suggesting continued growth in the farm cycle. Raw materials cost pressures kept the profit forecast unchanged, but the company should have pricing opportunities in 2005.</p> <p style="text-align: center;">* * *</p> <p>Continued end market strength in construction and farm equipment seems to be occurring despite elimination of accelerated depreciation. We are raising our 06 and 07 estimates on a slightly stronger top line. We continue to model 06 as a peak year.</p> <p>Valuation: Maintaining Equal-Weight rating and \$75 target</p>	<p>Theflyonthewall.com, Feb. 15, 2005:</p> <p>We are incrementally more positive on DE stock following sell-off on what we view as an in-line quarter. DE raised its sales projections, suggesting cont'd growth in farm cycle. Raw materials cost pressures kept profit forecast unchanged, but Co should have pricing oppty's in 2005. Contd end market strength in construction and farm equipment seems to be occurring despite elimination of accelerated depreciation. We are raising our 06/07 ests on slightly stronger top line. We continue to model 06 as a peak year. Target \$75-Maintain Equal Weight.</p>
<p>Morgan Stanley, Cooper Tire & Rubber Report, Feb. 15, 2005:</p> <p>Cooper Tire . . . authorized a stock buyback that appears small relative to what we believe investors were expecting. We reiterate our Underweight rating . . . [C]ompany posted . . . \$0.04 versus . . . we had estimated \$0.23, but this figure included a buyback that did not occur. EPS comparisons are skewed due to our assumptions about share buyback/discontinued operations . . .</p> <p style="text-align: center;">* * *</p> <p>Guidance was disappointing. Management indicated that it expects 1Q05 earnings of \$0.01 - \$0.03 per share. This suggest our full year estimate of \$1.20 will be difficult to achieve.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>Co authorized stock buyback that appears small compared to what we believe investors were expecting. Co posted \$0.04 vs our \$0.23; however, our figure included a buyback that didn't occur and comparisons were skewed due to our assumptions about share buyback/discontinued operations. Guidance disappointing—Mgmt indicates it expects 1Q05 earnings of \$0.01-\$0.03 per share. This suggests our FY05 EPS of \$1.20 will be difficult to achieve. We believe results continue to suggest a company facing share pressure and operational difficulties-Maintain Underweight.</p>

<p style="text-align: center;">* * *</p> <p>We believe results continue to suggest a company facing share pressure and operational difficulties.</p>	
<p>Morgan Stanley, <i>Commonwealth Telephone Report</i> Feb. 16, 2005:</p> <p>Commonwealth reported strong 4Q04 results ... with EPS of \$0.67. Normalizing for CoCos' conversion and other one time items, EPS was \$0.74 vs. our estimate of \$0.70 (consensus of \$0.70 and company guidance of \$0.68-\$0.70).</p> <p style="text-align: center;">* * *</p> <p>... The market reacted negatively after the conference call, as the company did not disclose any plans for the use of cash. Commonwealth's cash balance rose to \$312 million and has almost no debt. While we do not rule out M&A, with no new stock repurchases, dividends seem like an obvious solution.</p> <p style="text-align: center;">* * *</p> <p>Maintain Equal-weight on the stock ... We would like to continue to see cash returned to shareholders in the form of stock buybacks and an eventual move to dividend distribution.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>Strong 4Q results with EPS of \$0.67. Normalizing for CoCos' conversion and other one time items, EPS was \$0.74 vs our est of \$0.70 (consensus of \$0.70 and company guidance of \$0.68-0.70). Market reacted negatively after Co's earnings conference call, as mgmt did not disclose any plans for use of cash. Co's cash balance rose to \$312M and has almost no net debt. While we do not rule out M&A, with no new stock repurchases, dividends seem like an obvious solution. We would like to continue to see cash returned to shareholders in form of stock buybacks and eventual move to dividend distribution. ... Maintain Equal Weight.</p>
<p>Morgan Stanley, <i>Assurant, Inc. Report</i>, Feb. 16, 2005:</p> <p>Conclusion: AIZ has outperformed its peers since its IPO. Its valuation, while still at a modest discount to peers, appears reasonable to us considering its lower near-term ROE prospects.</p> <p style="text-align: center;">* * *</p> <p>There has been no fundamental change in our thesis. Rather, at current levels, it seems investor's expectations have begun to catch up to management's ability to deliver improvements.</p>	<p>Theflyonthewall.com, Feb. 16, 2005:</p> <p>AIZ has outperformed its peers since its IPO. Its valuation, while still at modest discount to peers, appears reasonable to us considering its lower N-T ROE prospects. There has been no fundamental change in our thesis. Rather, at current levels, it seems investor's expectations have begun to catch up to mgmt's ability to deliver improvements.</p>

Misappropriation

25. In response to the Firms' demands, Fly apparently has modified its practice of reproducing significant portions of the Firms' equity research reports word-for-word, relying instead on paraphrasing that may, in some cases, remain substantially similar to, and thereby infringing of, the Firms' copyrighted reports. Whether or not Fly's ongoing conduct constitutes copyright infringement, it remains tortious and every bit as injurious to the Firms. Fly continues in bad faith to violate the Firms' rights by accessing, and then posting, in summarized and slightly reworded form, the substantive core of the Firms' equity research, often within minutes of its limited release to the Firms' clients. Even without regard to how Fly has been accessing this material, its conduct constitutes misappropriation

of time-sensitive equity research generated at substantial expense by each of the Firms for its clients and other authorized recipients, who rely upon the Firms as exclusive sources of significant analysis and who channel business to the Firms based upon the timely receipt of such analysis.

26. The following constitute just a few examples of Fly's unlawful practice of republishing the substance of the Firms' confidential, time-sensitive equity research, often within minutes of its release by the Firms, dating back over the past year. These same unlawful practices, to plaintiffs' knowledge, continue unabated to this day.

Firms' Research Reports	Theflyonthewall.com
<p>Lehman Brothers, <i>XM Satellite Radio Equity Research Report</i>, July 1, 2005, 14:15 EDT:</p> <p>We expect XM to continue its strong performance in 2H05, and reiterate our 1-Overweight rating Expect the company to revise its 5.5MM sub YE 2005 guidance upward. Now estimate 5.83MM YE 2005E subs, up from 5.76MM.</p>	<p>Theflyonthewall.com, July 1, 2005, 14:58 EDT:</p> <p>XM Satellite Radio-XMSR reiterate Overweight after strong Q2 sub annct@LEHM The firm expects the company to revise its 5.5M year-end sub estimates upward, and the firm brings their estimate up to 5.83M from 5.76M. LEHM feels XMSR will continue its strong performance in 2H05.</p>
<p>Merrill Lynch, <i>ConAgra Foods Inc. Equity Research Report</i>, July 1, 2005, 11:56 EDT:</p> <p>We are lowering our fiscal 2006 EPS estimate from \$1.45 to \$1.40, based upon continued challenging conditions in packaged meats, and expectations for a decline in trading & merchandising results within the Food Ingredients segment.</p>	<p>Theflyonthewall.com, July 1, 2005 12:03 EDT:</p> <p>The firm is lowering their 2006 estimate from \$1.45 to \$1.40 due to continuing challenges in the packaged meats as well as expectations in trading and merchandising results declining.</p>
<p>Merrill Lynch, <i>Sabre Holdings Corp. Equity Research Report</i>, Aug. 1, 2005, 7:19 EDT:</p> <p>We are upgrading our rating on Sabre to Buy from Neutral. We believe Sabre's 13% YTD stock price decline has created a buying opportunity....</p>	<p>Theflyonthewall.com, Aug. 1, 2005, 7:27 EDT:</p> <p>Sabre Holdings-TSG upgrading to Buy from Neutral@MCLO The firm is upgrading shares as they believe recent decline creates a buying opportunity.</p>
<p>Morgan Stanley, <i>Medco Health Equity Research Report</i>, June 14, 2005, 14:25 EDT:</p> <p>SEC review may extend closing of the Accredo acquisition. We now expect that the agency will conduct a full financial review. . .which could extend the closing of the deal until July or even August, with little impact on the deal....</p>	<p>Theflyonthewall.com, June 14, 2005, 14:30 EDT:</p> <p>Medco Health-MHS expect SEC will have full financial review of Accredo-OW@MSCO The firm still expects a deal to close with little changes but it could be extended until July or August because of the investigation.</p>

27. Even in cases where the posting of Fly's report occurs several hours after release of the corresponding report by one of the Firms, where Fly nevertheless is disseminating the research prior to the opening of the market for that day, Fly is interfering with the Firms' ability to serve as timely and exclusive sources of their own proprietary equity research and to capture revenues that may be generated based on this research.

28. This routine and systematic free riding on the Firms' equity research – a practice that admittedly is the heart of Fly's business model – impairs the Firms' incentive to provide that research as an exclusive service to their existing clients and to potential new clients. To the extent that the Firms are deprived of the intended exclusivity of their equity research as a result of its being made available by Fly, such conduct by Fly reduces the value of the research to the Firms' clients and inevitably will diminish the volume and dollar value of business generated for the Firms. If left undisturbed, this research-poaching by Fly – and by others who would engage in similar practices – inevitably will, among other things, adversely affect the Firms' willingness to continue to make substantial investments in generating and distributing such research. This is precisely the harm against which the misappropriation doctrine is intended to protect.

COUNT I

COPYRIGHT INFRINGEMENT

29. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 28 hereof as if fully set forth herein.

30. Fly's unauthorized copying of the most significant portions of the registered equity research reports listed in paragraph 24 above – which constitutes a small

fraction of the Firms' research reports that were so infringed by Fly – and the sale and distribution of such unauthorized copies to its subscribers by means of Fly's website, theflyonthewall.com, constitutes copyright infringement in violation of the copyright owners' exclusive rights of reproduction, distribution, and display under 17 U.S.C. §§ 106(1), (3), and (5).

31. The copyright violations committed by Fly were willful.

32. The plaintiff Firms whose registered reports have been infringed are entitled to statutory damages of up to \$150,000 per work infringed or actual damages and Fly's profits, as well as their costs and reasonable attorney's fees. 17 U.S.C. §§ 501, 502, 504, 505.

COUNT II

MISAPPROPRIATION

33. The Firms repeat and reallege each and every allegation set forth in paragraphs 1 through 28 above as if fully set forth herein.

34. Fly's systematic distribution of the substance of the Firms' equity research reports whether in textual or audio form, close in time to the Firms' own dissemination of such reports constitutes misappropriation of the Firms' research reports.

35. Specifically, Fly's practice of obtaining and competitively posting on or streaming via its website the substance of the Firms' equity research reports is unlawful because:

(i) the Firms generate the analysis contained in their reports at considerable cost and expense;

(ii) the value of the analysis is highly time-sensitive;

(iii) Fly's use of the analysis constitutes free riding on the Firms' costly efforts to generate it;

(iv) Fly's use of the analysis is in direct competition with the analysis offered by the Firms; and

(v) the ability of other parties to free ride on the Firms' efforts will substantially threaten the Firms' incentive to continue to invest in their research activities at the same level.

36. Fly's conduct diminishes the goodwill between the Firms and their clients that flows from the provision of proprietary equity analysis on an exclusive basis.

37. Fly's conduct has damaged the Firms while unjustly enriching Fly and will continue to do so unless enjoined.

38. The Firms are entitled to injunctive relief, damages, and any other remedies available under New York law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment with respect to their
Complaint as follows:

- A. Declaring that defendant has willfully violated 17 U.S.C. §§ 106(1), (3), and (5) by infringing the copyright rights of Lehman Brothers and Morgan Stanley in certain research reports and awarding statutory damages of \$150,000 per work infringed or actual damages as may be proved at trial;
- B. Declaring that Fly has violated the common law of New York by misappropriating the Firms' property in the commercially valuable, time-sensitive market analysis contained in the Firms' research reports and awarding such damages as may be proved at trial;
- C. Granting as against Fly, its agents, servants, officers, employees, and all those acting under its control and/or on its behalf and/or in concert with them, a permanent injunction prohibiting them or any person acting in concert with them from posting on theflyonthewall.com or on any other website owned or controlled by Fly, or from otherwise distributing, (i) text containing the substance of all or a qualitatively significant part of any equity research report created by one of the plaintiffs, whether generated for internal use or for distribution to clients or authorized vendors, or (ii) an audio feed containing the substance of all or a qualitatively significant part of any equity research report by any of the Firms, until such time as the commercial value derived from the time-sensitivity of the market research has passed.


D. Ordering that Fly be required to pay the Firms' costs, disbursements, expenses, and reasonable attorney's fees; and

E. Ordering that the Firms shall have of Fly such other and further relief as is just and proper.

Dated: New York, New York
June 26, 2006

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

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